

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Nakano Analyst: Kristina E. North Bill Number: AB 1859
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 2, 2004
Attorney: Patrick Kusiak Sponsor: Secretary of State's Office

SUBJECT: Limited Liability Companies, Certificate of Cancellation

SUMMARY

This bill would allow certain limited liability companies (LLCs) to cancel their existence in California without obtaining a tax clearance certificate.

PURPOSE OF THE BILL

According to the author's office the purpose of the bill is to allow an LLC that has not done business in this state to cancel its existence easily.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2005.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current federal tax law does not recognize an LLC as a business entity. For federal income tax purposes, an LLC may be classified as a partnership, a corporation, or a disregarded entity.

Current state law governs LLCs under the Beverly-Killea Limited Liability Company Act (commencing with Corporations Code Section 17000). This Act provides statutory authority for an LLC to organize and do business in California.

Current state law requires that prior to the cancellation of an LLC, the LLC must obtain a Tax Clearance Certificate from the Franchise Tax Board (FTB) certifying that its tax liabilities, if any, have been paid, assumed, or secured by bond or otherwise.

THIS BILL

This bill would allow the managers or members of an LLC that has not yet conducted business to cancel the existence of the LLC by executing a certificate of cancellation.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

3/8/04

The certificate of cancellation would be required to include a statement that:

- ◆ the certificate of cancellation is being filed within 12 months of the filing of the articles of organization,
- ◆ the LLC has no debts or liabilities, except those described as tax liabilities,
- ◆ the “tax liability” of the canceling LLC will either be paid or be assumed by another business entity or individual,
- ◆ a final franchise tax return has been filed with FTB,
- ◆ the LLC hasn’t conducted any business since organizing,
- ◆ any net assets of the LLC have been distributed to the entitled persons, if any,
- ◆ the cancellation is authorized by a majority of the managers or members, or the person or majority of persons that signed the articles of organization, and
- ◆ if the LLC has received payments for interests, those payments have been returned to investors.

This bill would allow the Secretary of State (SOS) to file a signed and verified certificate of cancellation without a tax clearance certificate for that LLC from FTB. The SOS would notify FTB of the cancellation.

This bill would also make parallel technical changes in the Revenue and Taxation Code related to the cancellation.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department’s programs and operations.

LEGISLATIVE HISTORY

AB 1875 (Nakano, Stats. 2002, Ch. 390) allows certain corporations that have not issued shares or named or elected a majority or any of the directors to dissolve without obtaining a tax clearance certificate.

OTHER STATES’ INFORMATION

The states of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* were reviewed because the tax laws in those states have similarities to California’s tax laws.

Each of these states has a different process for allowing LLCs to cancel. Generally, each of these states requires that an LLC resolve any tax obligations prior to the state recognizing the cancellation.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

POLICY CONCERN

This bill would permit an LLC to dissolve or cancel without obtaining a tax clearance certificate. Therefore, the entity would not have to resolve its tax debt before cancellation or withdrawal, as required by current law. However, under this bill, a person, LLC, or other business entity that assumes any tax liability would be responsible for any additional taxes or fees.

LEGISLATIVE STAFF CONTACT

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